

February 28, 1958

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Bernard S. Cram, Chief of Law Enforcement
Fish and Game Department
34 Bridge Street
Concord, New Hampshire

OCT 01 1998

CONCORD, N.H.

Dear Mr. Cram:

This is in response to your request of February 18th for our opinion as to the authority of the Fish & Game Director to take fresh water smelts from Lake Francis for the purpose of re-stocking other bodies of water in the area. You indicate that this operation was carried on last year with some success, but that it probably should be continued over several years before results can be evaluated.

It is our understanding that Lake Francis is an artificial body of water created by the construction of Murphy Dam, a project undertaken by the Water Resources Board under the authority of RSA 481.

The authority of the Director of Fish & Game with reference to the operation mentioned in your letter is contained in RSA 212:21 as follows:

"The director may take, remove or transfer fish, game and fur bearing animals at such times, in such manner, and from such places as he may deem proper for the protection or propagation thereof."

Though not specifically required by this section, we believe that this operation should be discussed with the Water Resources Board. RSA 212:11, authorizing the establishment of fish and game refuges, requires that the consent of authorities having jurisdiction over publicly owned waters be obtained. Though not specifically applicable to the present situation, this section is some indication on the part of the legislature of the course to be followed where more than one public agency is involved. Cooperation with the Water Resources Board at this time can avoid future conflict or interference with the Board's management of the project.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/m